

## NEGOTIATED SALES CONTRACT

GS-CC-DS-(S)-43101

(Pages)

This contract is entered into by and between the United States of America, hereinafter called the "Government", represented by the Contracting Officer executing this contract and the Contractor below identified. The Contractor agrees to purchase and the Government agrees to sell the material described below in accordance with the terms specified on this page and on any continuation pages attached hereto.


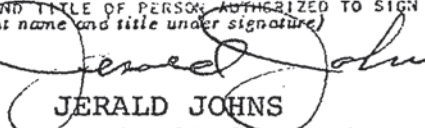
ITEM	DESCRIPTION OF PROPERTY (After each item listed below, state the time and place of delivery and applicable delivery terms)	QUANTITY (Number of units)	UNIT	UNIT PRICE	AMOUNT
	AMOSITE ASBESTOS, GRADE DX, SOUTH AFRICAN ORIGIN, packaged in bags, and located at the GSA-FMDS Baton Rouge Depot, Baton Rouge, Louisiana. Depot is served by the ICRR with railpoint at Sharp, Louisiana.  <u>THIS IS AN "AS-IS" SALE</u>  Contractor as appears herein is the Purchaser.	4.5	SHORT TON	\$176	\$792.00

The General Terms and Conditions for the Sale of Strategic and Critical Materials, GSA Form 2042, May 1967 edition, are made a part hereof by reference.

CONTRACTOR REPRESENTS: (Check appropriate boxes)

1. That he ☒ is, ☐ is not, a small business concern. (See GSA Form 2042 for definition of small business and small business classifications referred to in 2, below.)
2. If Contractor represents he is a small business concern, he further represents his applicable classification as:  
(Check one) ☐ (a); ☐ (b); ☒ (c); ☐ (d).
3. (a) That he ☐ has, ☒ has not, employed or retained any company or person (other than a full-time bona fide employee working solely for the Contractor) to solicit or secure this contract, and (b) that he ☐ has, ☒ has not, paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the Contractor) any fee, commission, percentage, or brokerage fee, contingent upon or resulting from the award of this contract; and agrees to furnish information relating to (a) and (b) of this paragraph 3 as requested by the Contracting Officer. (For interpretation of the representation, including the term "bona fide employee", see Code of Federal Regulations, Title 41, Part 101-45.313.)

INDICATE WHETHER ☐ INDIVIDUAL; ☐ PARTNERSHIP; ☒ CORPORATION. INCORPORATED IN THE STATE OF ALABAMA

EXECUTION BY CONTRACTOR	EXECUTION BY GOVERNMENT
DATE October 18, 1973	DATE OCT 23 1973
NAME OF CONTRACTOR SEPCO CORPORATION	UNITED STATES OF AMERICA
ADDRESS (Street, city, zone, and State. Type or print) Post Office Box 10846 Birmingham, Alabama 35202	BY  WALTER B. KOONS - Assistant Chief TITLE Minerals and Ores Branch (Contracting Officer)
SIGNATURE AND TITLE OF PERSON AUTHORIZED TO SIGN THIS CONTRACT (Type or print name and title under signature)  JERALD JOHNS PURCHASING MANAGER	THIS CONTRACT IS AUTHORIZED BY AND NEGOTIATED PURSUANT TO THE FOLLOWING LAW:  Public Law 89-422, dated May 11, 1966.





GENERAL SERVICES ADMINISTRATION  
PROPERTY MANAGEMENT AND DISPOSAL SERVICEGENERAL TERMS AND CONDITIONS FOR THE  
SALE OF STRATEGIC AND CRITICAL MATERIALS

## 1. INSPECTION:

The bidder is invited, urged, and cautioned to inspect the material to be sold prior to submitting a bid. It will be available for inspection at the places and times specified in the invitation. In no case will failure to inspect constitute grounds for the withdrawal of a bid after opening.

The bidder may inspect the material proposed for disposal by presentation of this invitation to the Commanding Officer at military installations or the depot manager at General Services Administration installations. However, when any material offered for disposal is stored at other locations, the bidder must make arrangements with Director, Storage Division, Property Management and Disposal Service, General Services Administration, General Services Building, 18th and F Streets, N.W., Washington, D.C., 20405.

## 2. CONDITION OF MATERIAL:

Unless otherwise specifically stated in the invitation, all material listed therein is offered for sale "as is." The description of the material is based on the best information available to the Government. However, the Government makes no warranty, expressed or implied, as to quantity, kind, character, quality, weight, size, or description of any of the material, or its fitness for any use or purpose. Except as provided in Conditions 7 below, or 10 below, no request for adjustment in price or for rescission of the sale will be considered. *This is not a sale by sample.*

## 3. CONSIDERATION OF BIDS:

The bidder agrees that his bid will not be withdrawn within the period of time specified for the acceptance thereof following the opening of bids (60 calendar days if no period be specified by the Government or by the bidder, but not less than 10 calendar days in any case) and that during such period his bid will remain firm and irrevocable. The Government reserves the right to reject any or all bids, to waive any technical defects in bids, and, unless otherwise specified by the Government, or by the bidder, to accept any one item or group of items in the bid, as may be in the best interest of the Government. Unless the invitation otherwise provides, bids may be submitted on any or all items. However, unless the invitation otherwise provides, a bid covering any listed item must be submitted on the basis of the unit specified for that item and must cover the total number of units designated for that item. In case of error in the extension of prices, unit prices will govern.

## 4. PAYMENT:

The purchaser agrees to pay for material awarded to him at the price or prices quoted in his bid. Payment of the full purchase price, subject to any adjustment pursuant to Condition 10 below, must be made by one of the methods set forth below. The method of payment under (a) or (b) below will be determined solely at the discretion of the Government.

(a) When the Government has approved an extension of credit, then promptly after passage of title to the purchaser of any quantity of material sold hereunder, the Government will invoice the purchaser therefor at the unit price or prices specified in the contract, and the purchaser shall pay to the Government the full amount of each invoice promptly upon receipt of such invoice.

(b) When the Government has not approved an extension of credit, payment of the full purchase price must be made within the time specified for removal and prior to delivery of any of the material. However, if any adjustment is made pursuant to Condition 10 below, then payment must be completed immediately upon notice of such adjustment. The balance of the purchase price, after applying the total bid deposit made by the purchaser under the invitation (or otherwise the full purchase price), shall be paid to the General Services Administration, in cash, or by certified check, cashier's check, traveler's check, bank draft, or postal or express money order, made payable to the General Services Administration. When the Government has not approved an extension of credit and more than one shipment is made hereunder, the purchaser shall pay to the Government prior to delivery an amount equal to the

portion of the purchase price for any portion of the material scheduled for delivery. If bid deposit has been made, a pro rata amount of such deposit will be applied against each shipment.

(c) The purchaser may elect to furnish, within ten days after notice of award, an irrevocable sight commercial letter of credit issued by an acceptable U.S. Bank in favor of GSA, with terms and conditions acceptable to General Services Administration. Such letters of credit shall provide for drafts to be drawn, accompanied by documents evidencing partial delivery in amounts equal to the portion of the purchase price after applying the applicable pro rata amount of the bid deposit.

(d) The Government reserves the right to apply any bid deposits made under the invitation by a bidder against any amounts due to the Government under a contract awarded to him thereunder. In those instances where the total sum due to the Government from the purchaser on a contract awarded to him under the invitation is less than the total amount deposited with his bid, the difference will be promptly refunded to him. Also, deposits accompanying bids which are not accepted will be promptly returned.

(e) Payments by the purchaser shall be accompanied with identifying information including the contract number, invoice number, and a description of the material purchased, and shall be addressed to General Services Administration, Finance Division 3BCBC, 7th and D Streets, S.W., Washington, D. C. 20407.

## 5. SHIPPING INSTRUCTIONS, OUTLOADING AND DELIVERY:

(a) When delivery is f.o.b. carrier's conveyance, the purchaser shall, at least 15 calendar days prior to the desired date of shipment, furnish the Government complete shipping and document distribution instructions and the necessary commercial bill of lading to accomplish shipment, including, but not limited to, designation of type and kind of conveyance, carrier routing, minimum load per conveyance, shipping schedule, and any other pertinent instructions. For shipment not via common carrier, instructions furnished shall also include the name of purchaser's duly authorized agent who will acknowledge receipt at the storage location of the material delivered by the Government and will furnish, prior to delivery, identification acceptable to the Government. Any expenses over and above those customarily required for normal loading shall be for the account of the purchaser.

(b) When sale hereunder is on a "where is" basis, the purchaser shall, at least 15 calendar days prior to the desired date(s) of outloading, furnish to the Government the name of the agent performing the outloading and the scheduling of the outloading. The purchaser, his agent and employees shall at all times comply with all applicable rules and regulations existing at the storage depot. The purchaser shall remove all materials sold hereunder and shall leave the storage area in condition acceptable to the Government. The purchaser shall save and hold the Government harmless from any liability for or on account of any injury to the purchaser or to the purchaser's personnel, or others, and from any damage to or loss of the equipment or property of the purchaser, or others, caused by the removal operations of the purchaser.

(c) The instructions on (a) and (b), above, shall be addressed to General Services Administration, Property Management and Disposal Service, Storage Division, General Services Building, Washington, D.C., 20405.

(d) Outloading will be performed and pick-up must be accomplished between the hours of 8:30 A.M. and 2:30 P.M. local time, Monday through Friday, holidays excepted, to the extent that loading facilities and other commitments will permit.

## 6. TITLE:

Unless otherwise specified in the invitation, title to the material purchased hereunder shall pass to the purchaser upon delivery by the Government.

## 7. RISK OF LOSS:

(1) Prior to passage of title to the purchaser, the Government will be responsible for the care and protection



Weight of the material sold hereunder shall be determined at the Government's expense by that one of the following methods which is specified elsewhere in the invitation:

(a) At the Government's option:

Unless otherwise specified in the invitation, when material is sold on a "unit price" basis, the Government reserves the right to vary the quantity or weight delivered by 10% from the quantity or weight listed in the invitation, and the purchaser agrees to accept delivery of any quantity or weight within these limits. The purchase price will be adjusted upward or downward in accordance with the unit price and on the basis of the quantity or weight actually delivered. No adjustment for variation will be made when material is sold on a "price for lot" basis.

If, after the award, the purchaser breaches the contract by failing to make payment as required by Condition 4 above, or by failing to remove the material as required by Condition 8 above, then the Government may send the purchaser a fifteen-day written notice of default (calculated from date of mailing), and upon purchaser's failure to cure such default within that period (or such further period as the Contracting Officer may allow), the purchaser shall lose all of the right, title and interest which he might otherwise have acquired in and to the material as to which a default has occurred. The purchaser agrees that if he fails to pay for the material or remove the same within the prescribed time, the Government may be entitled to retain or collect upon notice of default a sum equal to 20% of the purchase price of the material on which the default has occurred. Whenever the Government exercises this election, it shall specifically apprise the purchaser, either in its original notice of default or in separate subsequent written notice, that upon expiration of the period prescribed for curing the default the formula amount will be retained or collected by the Government as liquidated damages. The maximum sum, moreover, which may be recovered by the Government as damages for failure of the purchaser to remove the material and pay for the same shall be such formula amount. If the purchaser of otherwise fails in the performance of his obligations thereunder, the Government may exercise such rights and may pursue such remedies as are provided by law or under the contract.

The material shall be removed within the time specified in the invitation after notice of acceptance by the Government. If the purchaser fails to furnish the Government with shipping instructions at least 15 calendar days prior to the last day of the contract delivery period specified hereon, or fails to take delivery on or before the last day of such delivery period through no fault of the Government, title and risk of loss shall automatically pass to the purchaser as of the close of business on the last day of such delivery period. The Government will invoice the purchaser for all material remaining in storage on the last day of the contract delivery period. This provision shall not relieve the Government of its obligation to load such material in accordance with the provisions of Article 5(a), above. Storage charges as specified elsewhere in this invitation shall be assessed on all material remaining in Government storage after the last day of the delivery period.

(2) After passage of title, and prior to the date specified for removal, the Government shall be responsible only for the exercise of reasonable care for the protection of the material.

(3) After passage of title and after the date specified for removal of the material, or any extension approved in writing by the contracting officer, all risk of loss, damage, or destruction from any cause whatsoever, shall be borne by the purchaser.

17. DISPUTES:  
missioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, unless it be made with a corporation for its general benefit.

16. OFFICIALS NOT TO BENEFIT:

15. COVENANT AGAINST CONTINGENT FEES:

tive of the Government, changing or supplementing this contract or any condition thereof, is unauthorized and shall confer no right upon the purchaser.

has been established shall not exceed refund of such portion of the purchase price as the Government may have

Except for transportation charges, when a return of material at Government cost is authorized by the Govern-

material from the storage location from which it is to be shipped. Written notice shall be furnished the other party

excusable delay condition must furnish the other party with written notice of the nature and extent of the ex-

tion, as defined in this Condition 12, exists which would prevent receipt of the material at the plant of the consumer the provisions of this Condition 13 shall apply

thereafter the time for fulfillment of the contract shall be extended by the length of time during which cause prevented performance under the contract

12. EXCUSABLE DELAYS:

herein specified shall control. Weight certificates will be supplied by the Government and shall be final for payment

(c) Material shall be gross weighed in railroad cars or trucks with stenciled tare weight of such railroad cars and established tare weight.

(b) Weights as marked on containers, such as drums, bags, boxes, etc., shall govern for net and tare. If the containers are not so marked, producer's weights of record with the Government shall be used or the net weight shall be determined by draft weighing on Government platform scales at the storage facility with an allowance for the



(30) days from the date of receipt of such copy, the purchaser mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Administrator of General Services. The decision of the Administrator, or his duly authorized representative for the determination of such appeals, shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the purchaser shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the purchaser shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: Provided, that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

#### 18. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION:

(a) By submission of this bid or proposal, each bidder or offeror certifies, and in the case of a joint bid or proposal each party thereto certifies as to its own organization, that in connection with this sale:

(1) The prices in this bid or proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices, with any other bidder or offeror or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid or proposal have not been knowingly disclosed by the bidder or offeror and will not knowingly be disclosed by the bidder or offeror prior to opening, in the case of a bid, or prior to award, in the case of a proposal, directly or indirectly to any other bidder or offeror or to any competitor; and,

(3) No attempt has been made or will be made by the bidder or offeror to induce any other person or firm to submit or not to submit a bid or proposal for the purpose of restricting competition.

(b) Each person signing this bid or proposal certifies that:

(1) He is the person in the bidder's or offeror's organization responsible within that organization for the decision as to the prices being bid or offered herein and that he has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or

(2) (i) He is not the person in the bidder's or offeror's organization responsible within that organization for the decision as to the prices being bid or offered herein but that he has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above, and as their agent does hereby so certify; and,

(ii) He has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above.

(c) This certification is not applicable to a foreign bidder or offeror submitting a bid or proposal for a contract which requires performance or delivery outside the United States, its possessions, and Puerto Rico.

(d) A bid or proposal will not be considered for award where (a)(1), (a)(3), or (b) above, has been deleted or modified. Where (a)(2) above, has been deleted or modified, the bid or proposal will not be considered for award unless the bidder or offeror furnishes with the bid or proposal a signed statement which sets forth in detail the circumstances of the disclosure and the head of the agency, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

#### 19. LATE BIDS AND MODIFICATIONS OR WITHDRAWALS:

(a) Bids and modifications or withdrawals thereof received at the Office designated in the Invitation for Bids after the exact time set for opening of bids will not be considered unless: (1) they are received before award is made; and either (2) they are sent by registered mail or by certified mail for which an official dated post office stamp (postmark) on the original Receipt for Certified Mail has been obtained, or by telegram if authorized, and it is determined by the Government that the late receipt was due solely to delay in the mails or delay by the telegraph company, for which the bidder was not re-

sponsible; or (3) if submitted by mail (or by telegram if authorized), it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation: Provided, that timely receipt at such installation is established upon examination of an appropriate date or time stamp (if any) of such installation, or of other documentary evidence of receipt (if readily available) within the control of such installation or of the post office serving it. However, a modification which makes the terms of the otherwise successful bid more favorable to the Government will be considered at any time it is received and may thereafter be accepted.

(b) Bidders using certified mail are cautioned to obtain a Receipt for Certified Mail showing a legible, dated postmark and to retain such receipt against the chance that it will be required as evidence that a late bid was timely mailed.

(c) The time of mailing of late bids submitted by registered or certified mail shall be deemed to be the last minute of the date shown in the postmark on the registered mail receipt or registered mail wrapper or on the Receipt for Certified Mail unless the bidder furnishes evidence from the post office station of mailing which establishes an earlier time. In the case of certified mail, the only acceptable evidence is as follows:

(1) Where the Receipt for Certified Mail identifies the post office station of mailing, evidence furnished by the bidder which establishes that the business day of that station ended at an earlier time, in which case the time of mailing shall be deemed to be the last minute of the business day of that station; or

(2) An entry in ink on the Receipt for Certified Mail showing the time of mailing and the initials of the postal employee receiving the item and making the entry, with appropriate written verification of such entry from the post office station of mailing, in which case the time of mailing shall be the time shown in the entry. If the postmark on the original Receipt for Certified Mail does not show a date, the bid shall not be considered.

#### 20. DEFINITIONS:

As used throughout this contract, the following terms shall have the meaning set forth below:

(a) The term "Contracting Officer" means the person accepting the bid in whole or in part on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of the representative's authority.

(b) *Small Business:*

For this purpose, a small business concern is a concern which, together with its affiliates, falls within one of the classifications set forth in (c) below; is independently owned and operated; and is not dominant in its field of operation. (See Code of Federal Regulations, Title 13, Part 121, as amended, if additional information is desired.)

(c) *Small Business Classifications:*

(1) Any concern which is primarily engaged in manufacturing, if its number of employees does not exceed 500 persons provided, however, that a concern primarily engaged in SIC Industry 2911, petroleum refining, is small if its number of employees does not exceed 1,000 persons and it does not have more than 30,000 barrels-per-day crude-oil capacity from owned or leased facilities.

(2) Any concern which is primarily not a manufacturer (except as specified in subparagraph (3) of this paragraph), if its annual sales or annual receipts for its preceding 3 fiscal years do not exceed \$5 million.

(3) Any concern primarily engaged in the purchase of materials which are not domestic products, if its average annual sales or annual receipts for its preceding 3 fiscal years do not exceed \$25 million.

(4) Certified as a small business concern by the Small Business Administration.

#### INSTRUCTIONS TO BIDDERS:

1. *Bid Deposit:* Where a bid deposit is required by the invitation, such deposit must accompany the bid and be furnished in cash, or by postal or express money order; cashier's, certified or traveler's check; or a combination thereof; made payable to the General Services Administration. Letter of credit shall not be used to cover the bid deposit.

2. *Preparation of Bids:* Bids shall be filled out in ink, indelible pencil, or typewriter, with all erasures, strikeouts, and corrections initialed in ink or indelible pencil.